

Title 12

STREETS, HARBORS AND PUBLIC PLACES

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Chapter 12.02

PORT AUTHORITY

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ARTICLE I. GENERAL PROVISIONS

12.02.010 Applicability of provisions. "Port of Whittier" or "port" means navigable continuous waterways and the adjacent shoreline and facilities thereto under the ownership or control of the city of Whittier located within the corporate limits of the municipality, including but not limited to the ocean dock, the city cargo dock, portions of the small boat harbor and any other similar facilities, exclusive of those areas which are within the exclusive jurisdiction of either the state or the United States. (Ord. 37 (part), 1986)

12.02.020 Purpose of provisions.

A. The purpose of this chapter is to protect and preserve the lives, health, safety and well-being of the people who have property in, or use or work upon boats using the Port of Whittier, or who make sales or deliveries of merchandise to vessels therein, or who use these facilities in the course of visits for commercial purposes; to protect the property of such owners by regulating the port and its facilities free of nuisance, fire, and health hazards; to make reasonable charges for the use of certain facilities to enable the city, insofar as possible, to pay the cost of maintenance, operation, and supervision of the city's port facilities from the revenue derived therefrom; to further all the provisions of this chapter as being liberally construed for the accomplishment of these purposes.

B. It is the intent of this chapter to encourage the use of facilities of the Port of Whittier by cargo vessels, passenger-carrying vessels, commercial fishermen, government vessels, and the general boating public. It is further the intent of this chapter to prevent and discourage the use of the facilities for vessels which have or may become a charge or nuisance to the city.

C. The further intent of this chapter is to integrate management and use of those facilities of Whittier for recreation, commercial, transportation and fishing industry uses. (Ord. 37 (part), 1986)

12.02.030 Definitions. As used in this chapter:

A. "Dockage" means a charge made for vessels at wharves or moored on city property.

B. "Person" means an individual, firm, association, organization, partnership, business trust, corporation or company.

C. "Port director" means the director of the port or his designee.

D. "Tariff charges" means the charges included in the current port terminal tariff as filed with the Federal Maritime Commission. "Terminal charges" includes only charges for facilities, goods, or services provided by the city.

E. "Vessel" means ships or crafts of all types including but not limited to motor ships, steam ships, canal boats, tugs, barges, sailing vessels, motor boats, and every structure adapted to be navigated from place to place for the transportation of property and persons by any means.

F. "Wharf" means every pier, bulkhead, quay, dock, landing, float, grid iron, and other structure to which vessels make fast or upon which persons or cargo are discharged from a vessel or from which persons or cargo are loaded upon a vessel.

G. "Wharfage" means the charge made against any cargo and commodities passing over city premises.

H. "Wharfage demurrage" means the charge made against cargo and commodities left on city premises beyond the time specified. (Ord. 37 (part), 1986)

ARTICLE II. ADMINISTRATION

12.02.040 Reserved.*

12.02.050 Port director—Duties generally.

A. A port director and required assistants will be appointed to supervise and manage the port facilities. Such persons shall be appointed in the same manner as other city employees.

B. The port director shall:

1. Be the chief administrator of the port and harbors under the supervision of the city manager;

2. Perform the duties imposed by state or federal law upon harbor masters, port directors, and administrative directors of harbors and ports;

3. Regulate the use of municipal wharves and harbors, including the allocation of mooring space and its use;

4. Remove or cause to remove to a place of safety, a motor vehicle trailer found parked within the port:

a. In violation of this chapter, or

b. In such a manner as to create a significant danger to the safety of persons or property;

*Editor's Note: Former Section 12.02.040, Port and Harbor Commission, previously codified herein and containing portions of Ordinance No. 37 was repealed in its entirety by Ord. No. 310-94. See Chapter 2.21 for port and harbor commission provisions.

5. Take corrective action if a vessel or person fails to comply with the provisions of this chapter, an order of the port director, or a rule or regulation promulgated pursuant to this chapter by rendering such performance himself;

6. Supervise harbor masters and harbor management including regulations promulgated under this title. (Ord. 37 (part), 1986)

12.02.060 Port director—Delegation of authority.

Whenever a power is granted to, or a duty is imposed upon the port director, that power may be exercised or the duty may be performed by any duly authorized representative, or such other person as the port director may designate for the enforcement of these regulations. (Ord. 37 (part), 1986)

12.02.070 Port director—Enforcement authority. The port director shall enforce the provisions of this chapter, and shall enlist the aid of any duly authorized police officer of the city, to make arrests for violation of the provisions of this chapter or other sections of this code. (Ord. 37 (part), 1986)

12.02.080 Port director—Refusal to comply. No person shall intentionally fail or refuse to comply with the lawful order of the port director in any manner pertaining to the regulations of this chapter. (Ord. 37 (part), 1986)

ARTICLE III. VESSEL OPERATION

12.02.090 Mooring at wharf. No person may make fast a rope or mooring to any structure other than a mooring bit or bollard provided for that purpose. Every vessel at a municipal wharf or facility shall be made fast with head and stern lines in a manner approved by the port director. Every vessel lying at a wharf or wharf facilities shall comply with all directions of the port director with respect to its rigging. (Ord. 37 (part), 1986)

12.02.100 Pushing against wharf. A person in control of the vessel may not maneuver the vessel by using the wharf to break up, wrap around, or turn around, nor may the vessel be maneuvered in a manner which involves swinging with the stem of the vessel against the wharf. The master, agent or owner of a vessel who refuses or neglects to obey this section will be required to pay all damages caused to the wharf. (Ord. 37 (part), 1986)

12.02.110 Interfering with mooring or passing. The person in charge of a vessel which is in position to prevent or interfere with mooring or passage of another vessel shall when directed by the port director change the position of the vessel to such place as may be indicated by the port director. If the person in charge of the vessel does not comply with the directions of the port director, the port director is authorized to move the vessel. Expense incurred under this action will be assessed pursuant to Section 12.02.390. (Ord. 37 (part), 1986)

12.02.120 Projecting or adjacent vessels. A vessel whose stem or bow extends beyond the edge of a municipal wharf or facility, and a vessel laying alongside another vessel which is berthed at such a wharf or facility, shall be responsible for damage to itself or to another vessel. (Ord. 37 (part), 1986)

12.02.130 Berth assignments. Vessels at a municipal wharf or facility will be governed by instructions from the port director. Preferential assignments on a continuing basis may be authorized by the port director and will be for a specific period. The assignment of berth privileges includes only the right of the person or firm making the application therefor to dock vessels owned or operated by such person or firm at such berths, subject to the provision that when the berth is unoccupied the port director may dock other vessels at it. Such

assignments do not include either dockage, wharfage or wharf demurrage. (Ord. 37 (part), 1986)

12.02.140 Privileges revocable for noncompliance. Use of municipal wharves will be governed by instructions from the port director. Assignment and wharf privileges or assignment of space on other city property is not transferable. Forfeiture of the assignment privileges is the penalty for violation of this section. (Ord. 37 (part), 1986)

12.02.150 Departures.

A. Vessels must move at their own expense when ordered to do so by the port director for reasons relating to safety of persons or property, efficient use of port or nonpayment of tariff or other charges. If the person in control of the vessel does not comply with the port director's orders, the port director may take control of the vessel. The port director may then remove the vessel from the wharf or take whatever action is necessary to alleviate the situation which forms the basis of the order. Expenses incurred under this section will be charged pursuant to Section 12.02.390.

B. Upon the order of the port director, a vessel shall immediately vacate its berth so that a preferred vessel may berth there. Failure of a vessel to comply with such an order shall be a violation of this section and will subject the vessel to liability for all damages sustained by the preferred vessel. (Ord. 37 (part), 1986)

12.02.160 Obstructing navigation.

A. No vessel may remain in a position which interferes with the mooring or passage of another vessel or creates a danger to persons, vessels or property after the port director has ordered it to move.

B. No person may obstruct a municipal slip, passageway, or wharf so as to interfere with the mooring, passage or activity of the vessel. The port director may remove any such obstruction if the owner thereof fails to do so within twelve hours after its discovery by the port director.

C. No structure, material or substance that can sink in the water or obstruct navigation may be deposited in the bay or on the shore of the bay unless written permission is first obtained from the port director or from other authority.

D. When ballast, stone, scrap, dirt, rubbish or other loose material or matter that can sink in water is being unloaded from or loaded onto a vessel, a canvas chute or similar contrivance shall be used to prevent spills into the bay.

E. The owner of a vessel which sinks, is grounded or delayed so as to interfere with navigation, obstruct a port, or endangers persons or property shall post warnings on the vessel that can be seen during the day and night, and remove the vessel as soon as possible. However, if the owner is not capable of such immediate removal, the port director is authorized to take possession of the vessel or structure and remove it. No one shall interfere with or prevent such removal by the port director. Expenses incurred in enforcement of this section will be assessed pursuant to this chapter. (Ord. 37 (part), 1986)

12.02.170 Obstructing facilities. A ramp, walkway, wharf, or a slip in front of these places or municipal street or roadway may not be obstructed by merchandise, vehicles, materials or structures. If such obstruction occurs and is not removed within twelve hours, the merchandise, vehicle, material or structure shall be removed by the port director. Forfeiture of the assignment privileges is the further penalty for violation of this section. Expenses incurred under this section will be charged pursuant to this chapter. (Ord. 37 (part), 1986)

12.02.180 Dangerous vessels. Every vessel that enters or is within the port in such a condition which renders it dangerous to persons or property shall become immediately subject to the orders and directions of the port director. No person will fail or refuse to comply with the orders or directions in regard to the disposition of such vessel. If the person in control of the vessel does not comply with the port director's orders or directions, the port director is authorized to take control of the vessel and take whatever action is necessary to eliminate or alleviate the danger. Any expenses incurred in the enforcement of this section will be assessed pursuant to Section 12.02.390. (Ord. 37 (part), 1986)

12.02.190 Lost, abandoned or stolen vessels or property.

The port director may assume custody of apparently lost, abandoned or stolen vessels or property found within the port. Notification will be sent to the owner as determined from the registration number of the vessel, or from any ownership identification on the structure which can be easily read and understood. If the owner does not claim the vessel or property and pay the expenses incurred by the city within sixty days after identification, the property will be disposed of pursuant to Sections 12.04.200 and 12.04.210 of this title. If the vessel or property is timely claimed by the owner, the port may require reimbursement for the costs incurred prior to releasing the property or vessel. (Ord. 37 (part), 1986)

12.02.200 Manifest. A person in control of the vessel will be responsible for furnishing the port director or harbor master with a complete copy of the manifest showing all cargo loaded or discharged at a municipal wharf or facility. An inbound manifest will be furnished prior to or concurrent with the vessel's arrival, and an outboard manifest will be furnished prior to or concurrent with the vessel's departure. (Ord. 37 (part), 1986)

12.02.210 Right to board for inspection. The port director is authorized to enter upon and inspect the vessel to ascertain the kind, quality and quantity of merchandise or cargo which the vessel carries in to ascertain the condition of the vessel and its crew. No person will injure or molest the port director or refuse to allow the port director to enter upon a vessel for purposes specified in this section. (Ord. 37 (part), 1986)

12.02.220 Tariffs—Payment.

A. No person in control of a vessel shall cause or attempt to cause that vessel to leave the port prior to tariff charges incurred by the vessel being paid unless directed or allowed in writing to do so by the port director.

B. An owner, shipper, consignee or agent who is responsible for cargo which is discharged from or loaded upon a vessel shall pay the tariff charges incurred with respect to that cargo. Such payment should be made prior to the time when cargo leaves the port.

C. Allowed credit by the port director or his staff or timely payment by another person will satisfy the payment requirements of this section. (Ord. 37 (part), 1986)

12.02.230 Tariffs—Collection authority. No person may collect tariff charges unless authorized by the city. (Ord. 37 (part), 1986)

12.02.240 Sales or solicitations. No person may sell or solicit for the sale of goods or services without a written permit which has been authorized and issued by the port director after concurrence of the planning and zoning committee and the city, and obtaining a business license. The permit may contain conditions and limitations in order to ensure that the selling or solicitation will not interfere with the safe and efficient operation of the facilities located at the port. (Ord 37 (part), 1986)

ARTICLE IV. USE OF PORT FACILITIES

12.02.250 Rates and classifications.

A. Rates, charges and classifications to be charged shall be established for the use of facilities, goods or services provided at the port. Such rates, charges and classifications shall be just and reasonable, shall be published in such a manner as to make them generally available to the public and shall be final unless changed by the city council within twenty days after publication.

B. No person or entity may, for commercial purposes, tie up to, place property or equipment upon or otherwise use property or facilities within and under the jurisdiction of the port, unless otherwise authorized by the port director.

All uses, whether for commercial or public use, shall conform to and be consistent with the city's zoning ordinances. (Ord. 37 (part), 1986)

12.02.260 Fires or welding operations. No bonfire or open fire shall be allowed in any municipal wharf. No welding or welding

equipment is permitted on a wharf without permission of the port director. (Ord. 37 (part), 1986)

12.02.270 Petroleum product storage. No person may possess or keep acids, coal oil, gasoline, distillate or other liquid products of petroleum or empty drums which previously contained such products, on a wharf, except by special permit issued by the port director. (Ord. 37 (part), 1986)

12.02.280 Low-flashpoint oil. No vessel loaded with oil which will flash below one hundred ten degrees Fahrenheit will be permitted to haul alongside a vessel, wharf or structure, unless special permission has been granted by the port director. (Ord. 37 (part), 1986)

12.02.290 Fuel-oil delivery vessels. No tanker engaged in the business of supplying fuel oil will be allowed, when empty, to haul or lie alongside a vessel, wharf or structure, unless special permission has been granted by the port director. (Ord. 37 (part), 1986)

12.02.300 Absorption of waste oil. A user of the wharf will keep available an absorbent material approved by the port director, and will use such material for absorbing waste oil that may fall upon the floor of the wharf. (Ord. 37 (part), 1986)

12.02.310 Fueling of motor vehicles.

A. No motor vehicle which is dripping gasoline or other petroleum product will be allowed to cross or enter upon a wharf.

B. No gasoline or petroleum product will be put into or taken out of a vehicle which is on a wharf. If the gasoline in a vehicle becomes exhausted while the vehicle is on one of those areas, it must be hauled off the area.

C. A motor vehicle operated by gasoline or any product of petroleum shall be allowed to stand on a wharf only for a reasonable length of time, and then only when actually engaged in loading or unloading freight or passengers. A vehicle left standing on such an area without the constant attendance of its operator, or longer than is reasonable for loading or unloading purposes, may be impounded by the port director. (Ord. 37 (part), 1986)

12.02.320 Explosives and toxic or otherwise hazardous material. No explosive, toxic or hazardous material shall be discharged on or loaded from any wharf, pier, bulkhead, or vessel except by permission from the port director, in which case the material must be immediately removed unless a special permit is obtained from the port director. (Ord. 37 (part), 1986)

12.02.350 Merchandise liability. The city is not liable for damage to or loss of merchandise while it is on a municipal wharf or in a municipal storage area. (Ord. 37 (part), 1986)

12.02.360 Depositing waste. It is unlawful for any person to place or deposit any rubbish, refuse or articles of an offensive character likely to create a nuisance upon any wharf or wharf road or street leading to a wharf, or in the waters of the small boat harbor. Waste may be deposited in the appropriate receptacles provided for by the harbor or otherwise removed from the city. Bilges, holding tanks or other tanks containing waste, including but not limited to gurry or petroleum products, shall not be pumped or drained into the waters of the small boat harbor. This is not intended to prohibit pumping off brine tanks, provided gurry, etc., is screened out. Offloading of petroleum products shall be into suitable containers as permitted by the port director, and subject to applicable state and federal regulations. Any person, firm or corporation who violates this section shall be punished in accordance with this code in addition to any other municipal, state or federal regulation penalties as may be prescribed. (Ord. 76-88 §1, 1987; Ord. 37 (part), 1986)

12.02.370 Deposit of property. No person will deposit cargo, merchandise, equipment, tools or other property upon any area of the port without permission of the port director. If it is necessary for the port director to remove property deposited in violation of this section, disposition will be as prescribed in Sections 12.04.200 and 12.04.210 of this title. (Ord. 37 (part), 1986)

12.02.380 Injury or damage reports. A person who is involved in an accident which results in the injury or death of a person, or any property damage, shall immediately notify the port director. If the office of the port director is closed, notification shall be given to the department of public safety. The notification shall include the name and address of the person, the type and extent of the injury or damage, the location where the injury or damage occurred and the date and time when the injury or damage occurred. (Ord. 37 (part), 1986)

12.02.390 Expenses of corrective action.

A. If a person or vessel fails to comply with the requirements specified by this chapter and this failure requires the port director to take necessary corrective action as directed by these regulations, the person and the vessel which employs that person will be responsible for the expenses incurred by the port director in the enforcement of these regulations.

B. If the port director has to assume possession or control of the vessel or other property in order to take corrective action, then such possession or control may be maintained until the expenses are paid.

C. Nonpayment of expenses is grounds for denying the use of facilities at the port. Furthermore, Sections 12.02.410 and 12.04.180 will be applicable. (Ord. 37 (part), 1986)

12.02.400 Non-liability of city.

A. The city, its officials and agents, including the port director and harbor master, shall not be responsible for any damage to any boat or person using the port facilities, and nothing contained in these regulations shall be construed or interpreted to constitute authority for the establishment of a bailment relationship between the city and any individual for the care, custody, management and control of the boat or any other personal property.

B. Any person who causes to be damaged any float, grid, dock, launching ramp, approach, piling, dolphin, a navigation aid, buoy, breakwater, building, or related appurtenances within the port shall be responsible for the costs of repair or replacement thereof. (Ord. 37 (part), 1986)

12.02.410 Violation—Penalty.

A. A person who violates the provisions of these regulations is subject to a civil penalty of one hundred fifty dollars for each violation.

B. Notwithstanding the availability of any other remedy, the city or any aggrieved person may bring a civil action to enjoin any violation of these regulations, or to recover money due and owing or to obtain damages for any injury the plaintiff suffered as a result of the violation.

C. Each act or condition violating these regulations, and each day during which the act or condition exists, continues or is repeated, shall be a separate and distinct violation.

D. The penalties and remedies provided for violation of this chapter are in addition to and not in lieu of any other penalty provided for in state or federal law or municipal ordinance or any civil remedy available to the city. (Ord. 37 (part), 1986)

Chapter 12.04

SMALL BOAT HARBOR

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12.04.220 Liability for damages.
12.04.225 Citation form.
12.04.230 Violation—Penalty.

12.04.010 Applicability. The regulations contained in this chapter may be known and cited as the small boat harbor regulations. These regulations apply to any public facility operated by the city within the confines of the small boat harbor. (Ord. 34 (part), 1986)

12.04.020 Purpose of provisions.

A. The purpose of this chapter is to protect and preserve the lives, health, safety and well-being of the people who have property in, or use or work upon boats using the city's boat harbor facilities, or who make sales or deliveries of merchandise to boats therein, or who use these facilities in the course of visits for commercial or pleasure purposes; to protect the property of such boatowners by regulating the harbor and its facilities free of nuisance, fire, and health hazards; to make reasonable charges for the use of certain facilities to enable the city, insofar as possible, to pay the cost of maintenance, operation, and supervision of the city's boat harbor facilities from the revenue derived therefrom; to further all the provisions of this chapter as being liberally construed for the accomplishment of the purpose of protecting the general welfare and to operate the boat harbor on a nonprofit basis.

B. It is the intent of this chapter to encourage the use of facilities of the small boat harbor by pleasure boats, commercial fishermen, government vessels, and the general boating public. It is further the intent of this chapter to prevent and discourage the use of the facilities for commercial enterprise or by boats which have or may become a charge or nuisance to the city. (Ord. 34 (part), 1986)

12.04.030 Jurisdiction. The small boat harbor facilities are under the ownership of the State of Alaska Department of Transportation and by the management agreement shall be under the jurisdiction of the council of the city, who shall have the authority to classify areas of the harbor, set fees for the use of facilities, make rules and regulations for the governance of the harbor, and appoint a harbor master to implement this chapter. (Ord. 34 (part), 1986)

12.04.040 Definitions. In this chapter, unless the context otherwise requires:

A. "Beam" means the greatest overall width of the vessel.

B. "Boat" means all vessels, ships, boats, skiffs, and watercraft of every kind and description.

C. "Boatowner" means the actual or registered owner, master, agent or the person in navigational control, or person responsible for the operation of the boat.

D. "Derelict" means any boat moored or otherwise located within the boundaries of the small boat harbor which has been or gives the appearance of being forsaken, abandoned, deserted or cast away, or which by any substantial evidence of neglect may be considered abandoned.

E. "Facilities" means all waters, improvements, and appurtenances of the small boat harbor and the waters of Passage Canal within two hundred feet of the harbor.

F. "Harbor" means the Whittier small boat harbor.

G. "Harbor master" is the official hired by the city, or a person designated by him, to manage and enforce the provisions of this chapter.

H. "Houseboat" means a dwelling unit built upon a barge, log raft or similar floating structure, constructed for habitation, and for which no other reasonable use appears or can be demonstrated.

I. "Mooring" means securing or otherwise attaching a boat to any harbor facility.

J. "Regulations" means the small boat harbor regulations.

K. "Transient vessel" means any vessel that is not registered by a preferential berthing agreement in the small boat harbor.

L. "Whittier small boat harbor" means all tide and submerged lands, uplands, improvements and appurtenances thereto leased from the state and which are located in Passage Canal at the city of Whittier, Alaska. (Ord. 34 (part), 1986)

M. "Nuisance" means when considering vessels in the harbor, including its dry storage areas, any vessels which may become a menace to the safety or welfare of other boats or their occupants, as further described in WMC 12.04.070. (Ord. 330-96 §2 (part), 1996)

12.04.050 Funds. The city council of the city shall establish and maintain a separate fund entitled, "Whittier Small Boat Harbor Fund." All mooring and storage rentals, fees, fines and other revenue arising out of the use, management or operation of the harbor shall be deposited to this fund to be expended exclusively for the operation, maintenance, supervision and improvement of the small boat harbor. (Ord. 145-89 §2, 1989; Ord. 34 (part), 1986)

12.04.060 Implied agreement. The moorage or use or presence of any boat within the small boat harbor shall constitute an agreement by the owner, operator, master or managing agent to conform to the provisions of these regulations and any rule, code or order made pursuant thereto. (Ord. 34 (part), 1986)

12.04.070 Harbormaster.

A. A harbormaster and required assistants will be appointed to supervise and manage the boat harbor facilities. Such persons shall be appointed in the same manner as other city employees.

B. The harbormaster is charged with the duty of enforcing all the provisions of this chapter and any rules and codes adopted under this chapter.

C. Assignment of moorage stalls shall be by the harbormaster on a first-come, first-served basis, from a list maintained by the harbormaster. This list shall be subdivided into five categories:

1. Up to twenty-eight feet by ten feet;
2. Twenty-eight feet to thirty-four feet;
3. Thirty-four feet to thirty-seven feet;
4. Thirty-seven feet to forty-five feet; and
5. Forty-five feet to fifty-four feet.

The harbormaster shall supervise and manage the assignment of dry land storage and the use of the boat lift, launching ramp, gridiron, parking lots, and all other facilities. He may, in the interest of safety and order, require the owner of a boat to change from one moorage space to another and may, in the absence of the boatowner, move the boat himself without any liability to the city.

D. The harbormaster may, at his discretion, refuse moorage or storage to any boat which may become a menace to the safety or welfare of other boats or their occupants. He may refuse the use of any of the harbor facilities to boats that may cause damage to the facilities. He may, at his discretion, refuse moorage to boathouses, floats, scows, log rafts, barges, and other cumbersome floating structures. Use of the harbor facilities by floating boat shelters, floating storage buildings or boathouses is prohibited.

E. The harbormaster may refuse moorage or use of any harbor facility to any boat or boatowner violating any provision of these regulations.

F. The harbormaster shall have the duty and the exclusive power to post signs and to thereby designate the limit of harbor speeds, classification and use or harbor moorage and storage areas, and such other signs and notices necessary to inform the public of authorized or prohibited uses of harbor facilities. The harbormaster is authorized to direct all waterborne and vehicular traffic within the limits of the harbor boundaries, including designated parking and storage areas.

G. No full-time city employee shall perform labor on or receive money or gifts from boatowners, their agents or assigns during hours of employment with the city. No full-time employee of the city shall act as agent or representative for any boatowner, U.S. Marshal or other party in control of said property while the boat or related property is located within the harbor or harbor storage area.

H. The harbormaster shall have the authority to issue harbor ordinance violation tickets known in short form as "harbor tickets" which shall be similar in form and procedure (but applicable to boats) as to traffic tickets issued under Title 10 of city ordinances. Tickets for improper moorage may be served by attachment to the vessel. (Ord. 34 (part), 1986)

12.04.080 Classification of harbor areas.

A. Numbered stalls shall be set apart and designated for exclusive mooring of privately owned boats on a yearly basis upon the boatowner having first made arrangements with the harbormaster and having paid the rent as provided in this chapter. Each stall shall be numbered in such a manner that its location can be readily determined.

B. Float areas not otherwise posted for restricted use or exclusive mooring shall be designated for transient moorage, and other such temporary uses as the harbormaster may order. No boat or boatowner shall have any exclusive right to transient mooring, or to return to the same space if, upon return, it is occupied by another boat. The harbormaster may, at his discretion, deny to any boat the use of open mooring.

C. Designated float areas may be used for loading and unloading equipment and passengers from boats using the harbor facilities. No boat shall be moored in such areas for any period of time longer than is necessary for such loading or unloading.

D. All designated loading zones on the dock and floats are to be used only for the purpose of loading and unloading supplies, equipment and stores. No boat shall be moored in such designated areas for any period of time than is required for such loading and unloading.

E. Wharfage charges for revenue cargo moving across the dock shall be paid as provided in this chapter. "Revenue cargo" means and includes any and all vehicles, goods, materials and commodities transported for hire or use or resale in connection with a commercial enterprise. A bill of lading, cargo manifest, or commercial fish ticket must be provided to the harbormaster for determination of payment.

F. No vessel owner or operator shall occupy gridiron space without first making reservations with the harbormaster and paying the required rent. Use shall be limited to reasonable times required to accomplish bottom painting, repairs and other customary gridiron uses. The harbormaster may make uniform rules determining the time allowed and what types of vessels may use the gridiron as well as the allowable weight of any such vessels. Rents for the gridiron use shall be paid as provided in this chapter.

G. The boatlift shall be designated for the exclusive purpose of launching or retrieving boats from the waters of the harbor. The lift will be operated exclusively by the harbormaster or his designated assistants. The lift shall operate only in the immediate vicinity of the dock and dry storage area and it shall be the duty and responsibility of the boatowner to transport the boat to and from the lift areas. Rents for the use of the boat lift shall be paid as provided in this chapter.

H. The launching ramp may be used by the general public for launching or retrieving boats on wheeled trailers. Use of the ramp for any purpose shall be permitted only under the supervision of the harbormaster. The use of skids is prohibited and the harbormaster may refuse the use of the ramp to those vehicles which, in his opinion, might over stress or otherwise damage the facility.

I. Numbered or otherwise marked dry land storage areas shall be set apart and designated for the exclusive use of privately owned boats upon the owners thereof having first made arrangements with the harbormaster. Storage may be used by the general public for a fee, however, the providing of trailers, skids, blocks, cradles, dollies or other storage devices shall be the responsibility of the owners. The harbormaster may refuse the use of any device that is or may create a hazard to the safety or welfare of other boats, their owners or occupants.

J. Numbered or otherwise marked areas shall be set aside for the exclusive use of automobiles or boat-trailer parking by the general public at a fee. No automobile or boat-trailer owner shall have the exclusive right to any parking space or area nor shall he have the right to return to the same space or area if upon return it is found to be occupied by another automobile or boat trailer in areas designated for short-term parking or loading zones. No owner or operator of any automobile or boat trailer shall occupy parking space except for such

reasonable times as are necessary while engaged in customary activities related to the small boat harbor.

K. Accepting moorage confers upon the user the requirement to keep finger floats free from debris, property storage, snow or any item or material which may restrict safe and open foot passage.

L. The harbormaster shall have the right to board and inspect any vessel and leased area within the harbor facility at any time for cause. This regulation should not be construed to mean that failure to perform such inspection is the responsibility of the harbormaster or the harbor facility. Failure of the vessel owner, operator or occupant of the vessel to allow the harbormaster to board his vessel shall be deemed a violation of these regulations.

M. Any person present upon, within or using the harbor facility shall comply with all verbal or written communications of the harbormaster. These communications include administrative and operational policies and procedures as issued.

N. The harbormaster shall enforce the provisions of these regulations and may enlist the aid of any duly authorized police officer of the city to make arrests for violations of these regulations. No person will intentionally fail or refuse to comply with the lawful orders of the harbor in any manner pertaining to these regulations. (Ord. 34 (part), 1986)

12.04.090 Business office. All registration of boats, payments of moorage and other charges, and other harbor facility business will be conducted at the harbor office. (Ord. 34 (part), 1986)

12.04.100 Rentals and fees.

A. A schedule of mooring charges and fees shall be established by ordinance of the city council and be subject to review as occasion demands.

B. Moorage and storage rentals and other fees for the use of facilities shall be paid in advance, unless special arrangements are made in writing with the harbormaster. Failure to register or pay such rentals or fees shall be presumed to be an abandonment.

C. The rental of preferential moorage space shall be on a yearly basis; from July 1st through June 30th. If the boat in question is removed from the harbor and a written agreement is made to cancel the rental agreement prior to September 1st, a prorated refund shall be authorized.

D. At his discretion, the harbormaster may charge a new renter on a pro rata basis from the date of entry into the harbor.

E. For the purpose of determining any rental or fee, boat length shall be the overall length including bow sprits, swim step or any other protrusions.

F. Any accounts delinquent by sixty days constitutes justification for the harbormaster to refuse any services except emergency entrance into the harbor until such fees are paid. (Ord. 284-93 §2, 1993; Ord. 146-89 §2, 1989; Ord. 110-88 §2, 1988; Ord. 34 (part), 1986)

12.04.110 Injury or damage reports. Any person who is involved in an accident or incident which results in the injury or death of a person or any property damage shall immediately notify the harbormaster and file a written report. In the event that the harbor office is closed, notification shall be given to the police department. The notification shall include the name and address of the person, the type and extent of the injury or damage, the location where the accident or incident occurred, the date and time of the accident or incident, and names of witnesses. (Ord. 34 (part), 1986)

12.04.120 Harbor privilege agreement.

A. The harbor privilege agreement shall be signed by the waiting list applicant who must own or retain ownership of at least fifty-one percent of the vessel to be moored and agree to the terms and provisions thereof. The following terms and provisions shall be made part of the harbor privilege agreement:

1. The applicant agrees to abide by the rules and regulations and all amendments thereto relating to the small boat harbor as established by or pursuant to this chapter of the Whittier Municipal Code as now constituted or hereafter amended.

2. The applicant agrees that any unpaid fees and charges shall become a lien against the vessel described in this agreement.

3. Nothing in this chapter or in the ordinances and regulations of the city have been or shall be interpreted to impose upon the city any obligation or responsibility for the care and protection of any private property, including vessels, this agreement being limited to privileges of moorage space only. Applicant expressly consents and authorizes the city to move and/or dry-dock the vessel in the event that rents, fees or other charges are not paid, ordinances or regulations are violated, or in the event of necessity or emergency. He further agrees to hold the city harmless against the loss or damage to the vessel, including its equipment, nets, gear, tanks, lines or other personal property on, attached or related to said vessel, resulting from the use of the city facilities and any movement of the vessel.

4. Applicant consents to a physical inspection of the vessel and its equipment by the harbormaster in the exercise of his duties as outlined in Section 12.04.070 of this chapter, at any time while the vessel is within the boundaries of the small boat harbor pursuant to the grant of harbor privileges.

5. Possession of a reservation for a specific mooring space does not apply or guarantee to the holder any right to exclusive use of any such spot for the duration of reservation agreement. Possession of a reservation is a guarantee that the reserved space shall be available for the use of the holder of the reservation during those periods when the subject boat is within the harbor facilities. The harbormaster may temporarily assign another boat to a reserved mooring space as he determines it expedient and only when the boat assigned to a reserved space is away from the harbor.

6. In the event that the holder of a mooring space reservation returns to the boat harbor facility and finds his reserved space occupied, the holder shall contact the harbormaster. The harbormaster will cause the temporarily assigned boat to be moved to another location.

7. The boatowner who possesses a reservation for a mooring space shall not sublease or in any other manner permit the use of such mooring space to another boatowner.

8. No property rights are created by this section. The holders shall have only a license to use the space reserved to him as provided for in these regulations.

B. A waiting list will be maintained by the harbormaster of names of persons requesting moorage space at times when no vacant space exists. As space becomes available, it will be offered to the first name on the waiting list whose vessel's size fits the criteria for the mooring space available. (Ord. 34 (part), 1986)

12.04.130 Revocation of privileges. In the event of the default in the performance of any obligation or failure to comply with any ordinance or regulation relating to the small boat harbor, harbor privileges may be revoked by the harbormaster following notice to the permittee by certified mail, and noncompliance for a period of thirty days from the date said letter is postmarked. (Ord. 34 (part), 1986)

12.04.140 Moorage space application and use requirements.

A. Every owner, master, operator or managing agent desiring to moor at a stall or store his boat in a designated storage area shall apply to the harbormaster. No stall or space shall be used until assigned and the rental paid.

B. The right to the use of a moorage space may not be transferred, assigned or sublet. Assignment of a moorage space by the harbormaster conveys the right to moor or store only the boat owned or otherwise managed by the applicant.

C. No moorage space shall be sublet or rented to any person for the purpose of conducting any commercial business enterprise, except that charter vessels may pick up and discharge passengers at any space rented to such vessel.

D. To qualify or remain qualified for a moorage space a boat must be seaworthy and must have sufficient motive power to permit the boat to be maneuvered and controlled safely both in and out of the harbor. (Ord. 34 (part), 1986)

12.04.150 Duties of boatowners and users.

A. Every owner, operator or managing agent of any boat using the harbor facilities shall take reasonable precautions to see that the boat in charge is kept clean, well-secured, free from fire hazards of all types, sufficiently pumped-out to maintain the boat afloat and to

otherwise attend to the requirements of the boat to avoid damage to other boats or to the harbor.

B. The harbormaster is granted the power and authority, from time to time but without obligation or liability to do so, to replace defective mooring lines, pump out boats which are in danger of sinking, or move any boat which may be creating a hazard to other boats or the harbor facilities. The boatowner is required to pay for these services.

C. No person shall bring into, moor or berth within the harbor any vessel of any kind whatsoever which is unseaworthy, or is in such a badly deteriorated condition that it is liable to sink or damage boat harbor facilities or other vessels, or which may become a menace to navigation, except in extreme emergency; in which case the owner shall be liable for any damage caused by such vessel. In the event a vessel or other craft is wrecked or sunk within the harbor, it shall be the owner's responsibility to mark its location and provide for the raising and disposition of such vessel or craft and assume all liabilities for damage to city property and other vessels in the harbor.

D. No person shall permit any boat or vessel to be and remain swamped or wrecked. Any boat or vessel found in such conditioned may be impounded or released to the owner or his agent only upon payment of all costs and charges incurred for damages, storage or handling of said vessel or boat.

E. Any person having knowledge of a petroleum spill within the boat harbor shall immediately report such spill to the harbormaster, or if the harbor office is closed, to the department of public safety.

F. No aircraft or floatplane shall land or take off from within the confines of the boat harbor or the entrance thereto. Any aircraft within these confines shall not be operated in excess of three miles per hour, or at such speed as to leave a wake or wave action that can endanger, damage or cause undue distress to any boat, person or harbor property. Aircraft entering the harbor shall register with the harbormaster to be assigned an area where the plane can be moored, and pay the mooring charge.

G. Vehicles and boat trailers must be removed from boat launching areas after the boat has been launched, and parked only in areas designated and posted by the harbormaster as parking areas. Vehicles and boat trailers parked in other than parking areas during the absence of the owner or operator shall be removed and impounded.

H. Launching or hauling out of boats on skids is prohibited. Boat trailers or other wheeled conveyances must be used. Boats shall be launched at designated launching areas only.

I. Due to the limited space, beach storage of supplies, merchandise or other property of boat owners shall be limited to areas designated by the harbormaster. (Ord. 34 (part), 1986)

12.04.160 Prohibited acts. It is unlawful for any person using the boat harbor facilities to:

A. Operate or to be in the actual control of any boat when under the influence of intoxicating liquor, illicit narcotics or other dangerous drugs.

B. Operate or cause to be operated any boat within the boat harbor facilities that exceeds the posted speed limit or causes a wake or wave action which will damage or endanger, or be likely to endanger, any other boats or any boat harbor facilities, including but not limited to, floats, finger floats, other boats or occupants thereof.

C. Operate or cause any boat to be operated recklessly or otherwise engage in a course of conduct within the boat harbor facility that is dangerous or a nuisance to persons or property.

D. Throw or otherwise cause to be deposited any gasoline, oil, sewage, trash, garbage, or debris of any type into the waters or into the entrance to the boat harbor facilities, nor upon the grounds thereof.

E. Create or maintain any nuisance within the boat harbor facilities or to become a nuisance thereon.

F. Allow dogs or any animals to run at large on any the boat harbor facilities. Dogs must be on a leash and accompanied by the owner who will be responsible for cleaning any offal left by the animal.

G. Allow children under the age of twelve years within the float or beach areas of the harbor facilities unless they are accompanied by the parent or other responsible adult.

H. Erect, place, post or maintain any advertising matter, other than legal notices, upon any part of the boat harbor facilities without the approval thereof first being obtained from the harbormaster.

All unauthorized advertising and signs shall be removed by the harbormaster.

I. Disregard, deface, remove, tamper with or damage any sign or notice posted by the harbormaster relating to the use of harbor facilities.

J. Fail to register with the harbormaster any vessel prior to occupying any of the boat harbor facilities.

K. Pump bilge containing petroleum products or chemicals or brine tank into boat harbor waters.

L. Deposit, place or leave any cargo, merchandise, supplies, articles or things upon any float, ramp, decline, walk or other public place within the facility excepting at such places as may be designated as loading areas by the harbor.

M. Dump any offal or refuse, including but not limited to, waste materials from canneries, fish processors and other land-based or water-based facilities within the harbor or in such close proximity as to cause overflow or drift of such material into the harbor facilities or the entrance thereto.

N. Store any explosives, gasoline or any other flammable substance in drums, cans or any other type of containers within the boundaries of the boat harbor facilities.

O. Set any net or fish-taking device within the harbor facility unless it is attended at all times, and shall not interfere with the movement of vessels within the harbor.

P. Swim, water-ski, or use any unorthodox type of boat, raft or other device within the harbor.

Q. Loiter around the premises of the harbor facility without lawful reason or justification.

R. Refuse to comply with any lawful order of the harbormaster.

S. Failure to provide designated agent to provide boat care if owner cannot respond to an emergency call within one hour of notification.

T. In mooring any boat or vessel within the port facilities, the master of the boat or vessel or any person having charge thereof, to leave or permit any fire aboard the vessel or leave unattended fire which creates an unjustifiable risk of harm to person or to property. Heating devices for long-term use such as furnaces, thermostatic controlled heaters, and heat lamps are excluded from this prohibition. Cooking stoves used also as heating units are classified as an unjustifiable risk. An unjustifiable risk is a risk of such nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. (Ord. 137-88 §2, 1988; Ord. 34 (part), 1986)

12.04.170 Acts prohibited without harbormaster approval. The following acts are prohibited without the prior approval of the harbormaster:

A. Using a vessel as a residence. Persons requesting mooring space for a vessel used as a residence must first comply with such separate regulations and conditions as are set forth and deemed appropriate by the harbormaster.

B. Major maintenance and repair work, including spray painting, sandblasting, welding, burning, outfitting, etc., upon any vessel in the harbor area must have prior approval of the harbormaster. An approved fire extinguisher shall be required when welding or burning.

C. Tapping, connecting, disconnecting or interfering with or tampering with electrical outlets or devices installed within the harbor facility shall not be allowed.

D. Building any type of float, shed, floating boat shelter or structure within the harbor facility.

E. Moving or altering any wharf, float, gangplank, ramp or other facility.

F. Posting of signs for the sale of items or the charter or rental of vessels.

G. Conduct any commercial business within the boat harbor facilities without proper license.

H. Transporting any item for sale, trade or other form of commerce across any harbor facility without permission of the harbormaster and paying in advance the wharfage rates as established by the city council.

I. Failure to register within four hours after entering the harbor. (Ord. 34 (part), 1986)

12.04.180 Lien for unpaid rentals, fees or services. The city shall have a lien for any unpaid rentals, fees or services. Should any such rentals or fees be unpaid for a period of sixty consecutive days after due, any boat upon which such rental or fee has accrued shall be impounded and disposed of in the manner provided for in Section 12.04.210. (Ord. 34 (part), 1986)

12.04.190 Removal of derelict boats.

A. Boats within the harbor which are abandoned or are derelicts, that is, maintained in such a manner as to make them liable to sinking, or maintained in such a manner as to constitute a fire hazard to other boats or to otherwise damage the harbor facilities or constitute a clear threat to harbor facilities are declared abandoned and are subject to removal from the harbor facility without liability for any damage done to said vessel by virtue of its removal. Boats removed under the provisions of this section shall be disposed of in the manner provided for in Section 12.04.210.

B. Sunken boats, boats listing or otherwise indicating the process of sinking, are deemed derelicts and declared abandoned and are subject to removal from the harbor facility without liability for any damage done by virtue of the vessels removal. Sunken vessels which are brought to the surface require certain technical operations to bring them to the surface for removal from the harbor. Municipal employees and special contract employees are to receive and are permitted due remuneration for such technical services. The amount and timing of any such remuneration is to be approved by the harbormaster and the city manager jointly. (Ord. 34 (part), 1986)

12.04.200 Removal of abandoned property. Any nets, gear, tanks, lines or other personal property which is deposited, stored or otherwise placed on any of the harbor facilities for a period of over forty-eight (48) hours is declared to be abandoned and a public nuisance and may be impounded, removed, sold or otherwise disposed of in the manner provided for in WMC 3.32.270 through 3.32.300. (Ord. 330-96 §3, 1996; Ord. 34 (part), 1986)

12.04.210 Disposition of impounded boats and property.

A. Vessels may be impounded if:

1. The vessel is within the harbor including its dry storage areas, and is a derelict or a nuisance as defined in this title;
2. The fees for the vessel (on which the City has a lien) are sixty (60) days delinquent;
3. The vessel is located in the harbor including its dry storage areas, and is in violation of this title, or a state or federal law; or

4. The owner, operators, master or managing agent is not aboard the vessel and the vessel is not properly identified by a name and/or number.

B. Notice to Owner:

1. **Contents.** Prior to impounding any vessel, the harbormaster shall prepare a written notice of intent to impound the vessel. This notice shall contain:
 - a. The name and/or official number or state registration number of the vessel;
 - b. The name and address, if known, of the owner, operator, master or managing agent, and the location of the vessel;
 - c. The basis or reason for impoundment; and
 - d. The reserved moorage space, if any, which will be forfeited if the vessel is impounded.

2. **Distribution.** The Notice of intent to impound shall be at least twenty-one (21) days before impoundment. The notice shall be:

- a. Mailed by certified mail, return receipt requested, to the last known owner, master or managing agent of the vessel at his or her last known address; and
- b. Posted on the vessel, in the harbormaster's office, and in the United States Post Office in Whittier.

C. Hearing

1. **Demand for Hearing.** The owner, master or managing agent or any other person in lawful possession of a vessel proposed for impoundment has the right to a pre-impoundment administrative hearing to determine whether there is cause to impound the vessel. Any such person desiring a hearing shall file a written

demand with the City Clerk within ten (10) days after the mailing and posting of the notice of intent to impound.

2. **Hearing Procedure.** The hearing shall be conducted within seventy-two (72) hours of receipt of a written demand therefore from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays and City Holidays are to be excluded from the calculation of the seventy-two (72) hour period. The hearing officer shall be designated by the City Manager and shall be someone other than the harbormaster. The sole issue before the hearing officer shall be whether there is cause to impound the vessel in question. "Cause to Impound" shall mean such a state of facts as would lead a reasonable person exercising ordinary prudence to believe there are grounds for impounding the vessel.

The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall have the burden of establishing that he or she has the right to possession of the vessel. The harbormaster shall have the burden of establishing that there is cause to impound the vessel. Failure of the owner, operator, master or managing agent to request or attend a scheduled impoundment hearing shall be deemed a waiver of the right to such a hearing and consent to the impoundment action.

D. Decision

At the conclusion of the hearing, the hearing officer shall prepare a written decision. The hearing officer shall only determine that as to the vessel in question, either that there is cause to impound the vessel or that there is no such cause. A copy of the decision shall be provided to the person demanding the hearing, and the owner of the vessel, if the owner is not the person requesting the hearing. The hearing officer's decision shall in no way affect any criminal proceeding in connection with the impoundment in question, and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final.

E. Impoundment

In the event the hearing officer determines there is cause to impound the vessel, the harbormaster may proceed immediately with the impoundment of the vessel. The harbormaster may impound the vessel by immobilizing it, removing it or having it removed from the water and placing it in public or commercial storage, with all expenses of haul out and storage and an impound fee to be borne by the owner of such vessel. At any time prior to the sale of the vessel, the owner, operator, master or managing agent, or person in lawful possession of the vessel may redeem the vessel by a cash payment of all fees against the vessel, including interest and costs.

F. Notice of Sale

1. **Contents:** Prior to the sale of any impounded vessel, the harbormaster shall prepare a written notice of sale of the vessel. The notice shall contain:

- a. The name and/or official number or state registration number of the vessel;
- b. The date, time and place of the sale; and
- c. The fees, interest, and costs which are due against the vessel and terms of sale, provided by WMC 3.32.250-300, which shall govern the sale.

2. **Distribution.** The notice of sale shall be at least thirty (30) days before the sale, and shall be:

- a. Mailed by certified mail, return receipt requested, to the last known owner, master or managing agent of the vessel at his or her last known address.
- b. Posted on the vessel, in the harbormaster's office, and in the United States Post Office in Whittier; and
- c. Published in a newspaper of general circulation in Anchorage at least once.

G. Sale

1. **Bids.** The minimum acceptable bid shall be a sum equal to the fees against the vessel, including interest and costs to be paid in cash at the time of sale or within twenty-four (24) hours thereafter. The proceeds of such sale shall be first applied to the cost of sale, then to interest, then to fees accrued and the balance, if any, shall be held in trust by the City for the owner of the vessel to claim. If such balance is not claimed within two (2) years, the balance shall be forfeited to the City. Upon sale being made, the City shall make and deliver its bill of sale, without warranty, conveying the vessel to the buyer.

2. **No Bids.** If at the public sale there are no acceptable bids for the vessel, the City may destroy, sell at a private sale, or otherwise dispose of the vessel. Such disposition shall be without liability to the owner, master or managing agent, person in possession of the vessel, or lien holder of the vessel.

3. **Terms of Sale.** The terms and method of sale shall be governed by the procedures outlined in WMC 3.32.250-300. (Ord. 330-96 §4, 1996)

12.04.220 Liabilities for damages.

A. The city, its officials, and agents, including the harbor master, shall not be responsible for any damage to any boat or person using the harbor facilities, and nothing contained in this chapter shall be construed or interpreted to constitute authority for the establishment of a bailment relationship between the city and any individual for the care, custody, management and control of the boat or any other personal property.

B. Any person who causes to be damaged any float, grid, dock, launching ramp, approach, piling, dolphin, a navigation aid, buoy, breakwater, building or related appurtenances within the harbor shall be responsible for the costs of repair or replacement thereof. (Ord. 34 (part), 1986)

12.04.225 Citation form. There is established a citation form for the use of the harbor master or designee in notifying the master of any boat or vessel or any person having charge thereof of violation of Chapters 12.02 and 12.04 of this code which may be amended from time to time as approved by the city manager and harbor master, and shall provide for right to citation of boats and/or persons in violation of any provision of these chapters or in the interest of mitigating risk to persons or property within the harbor area. (Ord. 138-88 (part), 1988)

12.04.230 Violation—Penalty.

A. A person who violates the provisions of this chapter is subject to a civil penalty as set out below for each violation:

1. Section 12.04.140, fee for violation—twenty five dollars;
2. Section 12.04.160(A), fee for violation—fifty dollars;
3. Section 12.04.160(B), fee for violation—fifty dollars;
4. Section 12.04.160(C), fee for violation—one hundred fifty dollars;
5. Section 12.04.160(D), fee for violation—one hundred fifty dollars;
6. Section 12.04.160(F), fee for violation—twenty five dollars;
7. Section 12.04.160(I), fee for violation—twenty five dollars;
8. Section 12.04.160(J), fee for violation—twenty five dollars;
9. Section 12.04.160(R), fee for violation—one hundred fifty dollars;
10. Section 12.04.160(L), fee for violation—twenty five dollars;
11. Section 12.04.160(M), fee for violation—twenty five dollars;
12. Section 12.04.160(N), fee for violation—one hundred fifty dollars;
13. Section 12.04.160(O), fee for violation—twenty-five dollars;
14. Section 12.04.160(P), fee for violation—one hundred fifty dollars;
15. Section 12.04.160(R), fee for violation—one hundred fifty dollars;
16. Section 12.04.160(S), fee for violation—twenty-five dollars;
17. Section 12.04.160(T), fee for violation—one hundred fifty dollars;
18. Section 12.04.210(A), fee for violation—seventy-five dollars.

B. Notwithstanding the availability of any other remedy, the city or any aggrieved person may bring a civil action to enjoin any violation of this chapter, or to recover money due and owing or to obtain damages for any injury the plaintiff suffered as a result of the violation.

C. Each act or condition violating this chapter, and each day during which the act or condition exists, continues, or is repeated, shall be a separate and distinct violation.

D. The penalties and remedies provided for violation of this chapter are in addition to and not in lieu of any other penalty provided for in state or federal law, or municipal ordinance, or any civil remedy available to the city. (Ord. 138-88 §2, 1988; Ord. 34 (part), 1986)

Chapter 12.08

CITY PROPERTY USE REGULATIONS GENERALLY

Sections

12.08.010 Advertising matter and signs—Nuisance declared.

12.08.020 Advertising matter and signs—Removal authority.

12.08.030 Advertising matter and signs—Confiscation.

12.08.040 Advertising matter and signs—Exemption for official legal notices.

12.08.050 Prohibited activities.

12.08.060 Violation—Penalty.

12.08.010 Advertising matter and signs—Nuisance declared. All advertising matter and signs or other plaques nailed or attached by any means without the prior written consent of the city to any property owned or under the custody and control of the city are declared to be public nuisances and shall be removed. (Prior code §11.40.010(A))

12.08.020 Advertising matter and signs—Removal authority. Any employee of the city may remove from any public property owned or under the control or custody of the city any advertising, signs or advertising matter whatsoever which has been attached or adhered to the property without being required to give notice of such intent to remove to the owners of, or the persons who originally attached, the item. (Prior code §11.40.010(B))

12.08.030 Advertising matter and signs—Confiscation. The city may confiscate or destroy any advertising matter, signs or plaques removed pursuant to Section 12.08.020. (Prior code §11.40.010(C))

12.08.040 Advertising matter and signs—Exemption for official legal notices. Official legal notices may be posted on city property at a public bulletin board or other public location designated by the manager for such purpose. (Prior code §11.40.010(D))

12.08.050 Prohibited activities.

A. Except in areas specifically designated for such use in accordance with law, no person may engage in any of the following activities on city land:

1. Camping;
2. Building fires;
3. Operating motor vehicles of any kind;
4. Constructing trails;
5. Discharging firearms or shooting into city land from beyond its boundaries;
6. Cutting or otherwise damaging live trees, shrubbery, brush or other vegetation;
7. Removing soil, rocks, gravel or plants of any kind;
8. Constructing structures of any kind.

B. On any city land no person may (except as otherwise authorized by law):

1. Kill or injure any animal unless such act is necessary to protect a human being or domesticated animal from attack;
2. Harass, torment, poison, provoke, trap or abuse any animal;

3. Interfere with, obstruct, mutilate, conceal or tear down any official notice, sign or placard posted by any city officer or employee;
4. Knowingly destroy or injure any public property;
5. Dump, abandon, throw, scatter or burn litter, garbage, rubbish or junk;
6. Break bottles or other glass containers within any of the areas described herein in such manner that fragments of glass may be strewn upon the ground. (Prior code §11.40.020)

12.08.060 Violation—Penalty.

A. A person who violates a provision of this chapter shall, upon conviction, be subject to a fine of not more than five hundred dollars.

B. Each day during which a violation described in this section occurs shall constitute a separate offense. (Prior code §11.40.030)

Chapter 12.10

MOBILE FOOD SERVICE

Sections:

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12.10.010 Applicable state law incorporated All statutes of the State of Alaska and any rules or regulations adopted by any state agency pertaining to public nuisances, food and food service establishments, public health and public sanitation applicable to a mobile food service, with particular reference but not limited to, Titles 17 and 18, Alaska Statutes, as amended, are incorporated by this reference as though fully set forth in this chapter.

12.10.020 Definition For the purpose of this chapter, “mobile food service” means a self-contained food service establishment that is designed to be readily moveable from location to location without being permanently affixed to any site or permanently connected to any water or sewer utility service.

12.10.030 License – Required No person may operate a mobile food service as defined in this chapter within the City without first obtaining a mobile food service license from the City Clerk or designee.

12.10.040 License – Application – Contents Every application for a mobile food service license shall contain the information required for applications for a license under Section 3.08 and, in addition, every applicant shall submit:

A. Proof satisfactory to the City Clerk or designee that the applicant has obtained the necessary licenses and permits from all governmental agencies having jurisdiction over such business. The applicant shall submit a copy of his State business license with the application.

B. Documentary proof satisfactory to the City Clerk or designee indicating that the mobile food service is covered by liability insurance naming the City as co-insured as follows: Bodily and Personal Injury and Property Damage Liability Five Hundred Thousand Dollars (\$500,000) each occurrence and aggregate.

C. In addition to such proof of insurance, the applicant shall agree in writing to hold the City harmless against all claims of whatever kind including any legal defense costs resulting from the business activities carried on under the mobile food service license.

12.10.050 License – Application – Referral Upon receipt of the application described in Section 12.10.040, the original shall be

referred to the Director of Public Safety who shall carry out an investigation, and approve or disapprove such application.

12.10.060 License – Application – Fees For each license issued under this chapter, the fee shall be two hundred fifty dollars (\$250.00) annually. All licenses shall expire on December 31st of the year issued.

12.10.070 Applicability and incorporation by reference of Chapter 3.08 Rules and regulations adopted by Chapter 3.08 of this code are incorporated by this reference as though fully set forth in this chapter.

12.10.080 Conduct of Business

A. A mobile food service may be operated in conformity with the Whittier Zoning Code from:

1. Private property or leased land, provided the owner or lessor has first granted permission in writing to the operator.
2. Public streets, alleys or right-of-ways at least fifteen feet from the traveled portion thereof, for a period not exceeding twenty-four hours. The City Clerk may grant permission to operate for a longer period of time.

B. A mobile food service may not be operated in front of or immediately adjacent to an established business offering the same or similar commodities from a fixed location, unless a designated vendor parking area has been named.

C. No person may operate a mobile food service inside the boundaries of a municipal park or campground unless such operation is permitted under ordinance, regulation or other lawful authority.

D. No licensee shall be permitted to operate in any congested area, to include areas designated as public parking, campgrounds, parks or open space or where his operation might impede or inconvenience the public.

12.10.090 Violation – Penalty A seller who fails to obtain a business license as required by this chapter, after notice in writing of the obligation to get a business license has been delivered personally or by regular mail to the seller, the seller's place of business, or the last known address of the seller is subject to a civil penalty not to exceed one thousand dollars, in addition to any taxes, penalties and interest owing pursuant to this chapter plus, costs and actual attorney fees incurred by the city in the collection of the civil penalty assessed against the seller. (Ord. 425-01 §2, 2001)

Chapter 12.12

CAMPER PARK USE REGULATIONS

Sections:

- [12.12.010 Fee—Payment in advance required.](#)
- [12.12.020 Facilities—Maintenance.](#)

12.12.010 Fee—Payment in advance required. There shall be a fee of five dollars per day if camping on the railroad-leased camper park area, to be paid in advance. There shall be a fee of ten dollars per day to be paid in advance if camping at the Smitty's Cove camper park. Campers may camp no longer than a week at a time at Smitty's Cove camper park except with permission from caretaker. Campers may camp for a term of a month at the camper park leased from the railroad. A monthly rate of one hundred dollars shall be paid in advance to the caretaker. (Ord. 163-90 §1, 1990: Ord. 6-10-82 §1, 1982)

12.12.020 Facilities—Maintenance. Maintenance of facilities shall be provided by the city. (Ord. 6-10-82 §2, 1982)

ROADS AND TRAILS SERVICE AREA

Sections

12.16.010 Purpose.

12.16.020 Establishment.

12.16.030 Board of supervisors—Functions.

12.16.040 Board of supervisors—Composition—Term.

12.16.010 Purpose.

A. Commensurate with AS 19.30.280 and AS 29.63.090, the purpose of this chapter and of the creation of the Whittier roads and trails service area contemplated herein is for the construction and maintenance of roads and trailways within and about the city as described in the map incorporated in this chapter as if set out in full, and as expanded and contracted as deemed appropriate by the board of supervisors and the city council for the city.

B. It is the purpose of the service area incorporated herein to provide a mechanism to produce available finances to fund the construction and maintenance of roads and trails currently in existence, as well as to develop those roads and trails for which there is deemed an appropriate need by the board of supervisors and as approved by the city council and/or appropriate vote of those registered voters within the prescribed service area or those property owners within such service area. (Ord. 7 (part), 1985: prior code §37.10.040)

12.16.020 Establishment. There is established, pursuant to AS 19.30.280 and AS 29.63.090, a service area in and around the city called "Whittier roads and trails service area." Additionally established is the board of supervisors for the Whittier roads and trails service area. (Ord. 7 (part), 1985: prior code §37.10.010)

12.16.030 Board of supervisors—Functions. The functions of the board of supervisors of the Whittier roads and trails service area are:

A. To identify existing and future demands for construction and maintenance of roads and trails within and around the city as depicted in the service area map incorporated in this chapter by reference;

B. Evaluation of existing and future demands for construction and maintenance of roads within the Whittier roads and trails service area;

C. Generating priorities and action plans, including capital improvement programs, for roads and trails within the Whittier roads and trails service area;

D. Reviewing and recommending revisions as necessary to the Whittier roads and trails service area, including but not limited to the following:

1. Proposed increases in or reductions of the physical area located within (or around) the Whittier roads and trails service area,

2. Developing proposals and plans for the construction or maintenance of roads and trails within the Whittier roads and trails service area,

3. Development, coordination and implementation of programs for acquisition of funds necessary to finance the services of construction and maintenance of roads and trails within the service area, including but not limited to:

a. Development, coordination and implementation of programs to secure available funds from state and federal sources, specifically such resources available pursuant to AS 19.30.280,

b. Development, recommendation, coordination, and implementation of policies and procedures, if necessary, for the levying of taxes, charges, or assessments in the service area in order to finance the services therein provided;

E. To formulate, generate, and revise, as needed, a map of the Whittier roads and trails service area and to revise such map to reflect expansions and reductions of the service area incorporated therein;

F. To conduct any and all such other duties as may be required from time to time to promote the development, construction,

and maintenance of roads and trails in the Whittier roads and trails service area. (Ord. 7 (part), 1985: prior code §37.10.020)

12.16.040 Board of supervisors—Composition—Term.

A. The board of supervisors, to conduct the duties as described in Section 12.16.030, shall consist of three persons appointed by the city council.

B. Term. The terms of such board of supervisors shall be staggered, and shall not exceed three years after each period. (Ord. 7 (part), 1985: prior code §37.10.030)

Chapter 12.18

PORT PASSENGER AND COMMERCIAL VESSEL PASSENGER USER FEES

Sections:

12.18.010 Definitions.

12.18.020 Passenger user fee—Amount.

12.18.025 Passenger user fee—Exemptions.

12.18.030 Registration and certificate.

12.18.040 Collection of passenger user fee.

12.18.050 Rules.

12.18.060 Return forms—Confidential information.

12.18.070 Recordkeeping duty—Investigation.

12.18.080 Filings to be continuous; seasonal

operations.

12.18.090 Procedures on delinquencies—Penalties and interest.

12.18.100 Period of limitation.

12.18.110 Penalty for chapter violation.

12.18.010 Definitions. For the purpose of this chapter, the definitions set forth in Section 12.02.030 shall apply, unless the context otherwise requires. The following words and phrases shall have meanings defined in this section:

A. "Cruiseline operator" means an individual or entity, including the state, loading or unloading passengers within the city limits of the city of Whittier on any vessel used for the purpose of transporting passengers for hire.

B. "Commercial vessel" means any vessel used in any commercial enterprise, including state vessels and cruise line operators, used for the purpose of hauling passengers or freight and cargo for a fee.

C. "Jurisdictional waters" or "waters within the jurisdiction" of the city of Whittier means all navigable waters within the city boundaries of the city of Whittier as those boundaries are defined in Chapter 1.08 of this code.

D. "Passenger" means fee-paying passengers on board any vessel within jurisdictional waters of the city for hire loading or unloading at a dock or wharf facility located within the city limits of the city of Whittier.

E. "Passenger manifest" means commercial cruiseline's manifest or equivalent indicating the number of passengers loading or unloading from a commercial cruise line within the city limits of the city of Whittier. (Ord. 307-94 §2 (part), 1994: Ord. 207-91 §1, 1991: Ord. 119-88 §3, 1988: Ord. 67 §1 (part), 1987)

12.18.020 Passenger user fee—Amount.

A. A passenger user fee of one dollar shall be assessed for every full-fare passenger loading or unloading from all commercial vessels from any dock or wharfing facility within jurisdictional waters of the city of Whittier. The passenger user fee is applicable to all passengers and is assessed once for each ticketed transaction regardless of whether the fare is for a one-way or round-trip excursion. Each passenger boarding, departing or remaining on the vessel is, subject to the fee. The passenger user fee shall be calculated based upon the Whittier passenger manifest for the vessel.

B. There shall be established an account entitled "Passenger User Fee Fund." All passenger user fee funds received with returns filed by cruiseline operators shall be dedicated to harbor capital maintenance and repair projects. (Ord. 378.98, §2, 1998)

C. Change in rate or fee may be done only by ordinance. In changing the passenger user fee rate, the factors to be considered shall

be the amount of revenue necessary to provide services to vessels within jurisdictional waters of the city, the amount of revenue necessary to off-set expenditures caused in whole or in part by vessels within jurisdictional waters of the city of Whittier, and the amount of revenue necessary to maintain fund reserves sufficient to off-set seasonal fluctuations in vessel visits. (Ord. 378-98 §2, 1998; Ord. 378-94 §2, 1994; Ord. 207-91 §§2, 3, 1991; Ord. 159-90 §1, 1990; Ord. 119-88 §2, 1988; Ord. 77-88 §1, 1987; Ord. 67 §1 (part), 1987)

12.18.025 Passenger user fee—Exemptions. Vessels owned and operated by the state of Alaska and the United States Government in their regulatory functions, or otherwise specifically exempt from such fees by federal or state law, are exempt from the passenger user fee. This exemption does not apply to enterprise activities of state or U. S. Government, including the Alaska State Ferry System. (Ord. 307-94 §2, 1994)

12.18.030 Registration and certificate. All commercial vessels shall file with the city manager's office an application of registration on a form prescribed by the city manager not less than fifteen days after the date of commencing business within the city limits. (Ord. 307-94 §2 (part), 1994; Ord. 207-91 §4, 1991; Ord. 119-88 §4, 1988; Ord. 67 §1 (part), 1987)

12.18.040 Collection of passenger user fee.

A. Responsibility of Vessel Owner/Agent—Manifest. The owner or agent of the commercial vessel shall submit to the city a passenger manifest stating the number of passengers on board, departing, or boarding the vessel during its stay within the jurisdictional waters of the city per vessel per sailing no later than thirty days after the vessel departs the jurisdictional waters of the city of Whittier.

B. Presumed Passenger Manifest. In the event the vessel owner or agent fails to properly and timely submit the passenger manifest, the city shall invoice the vessel owner or agent a passenger user fee based upon the known maximum passenger capacity for the vessel or a vessel of similar type. In the absence of such information, the city may use other reliable information as the basis for determining the passenger user fee.

C. Information for Determining Fee. The burden shall be on the vessel owner or agent to provide the correct information for determining the fee. The information used by the city shall be deemed conclusive if the vessel owner or agent fails to provide the correct information with payment of the correct amount within thirty days of invoice.

D. Responsibility of Vessel Owner/Agent—Return Form. The owner or agent of the vessel shall, within thirty days following the last day of each calendar quarter, make out a return, on forms furnished by the city, for the preceding quarter and remit the passenger user fee. Each form shall set forth the following:

1. Number of passengers per vessel, per sailing;
2. The total amount of passenger user fee for loading or unloading of each passenger per vessel, per sailing, and the amount of administrative fee withheld pursuant to this chapter;
3. Such other or different information and supporting papers as the city manager may require by ordinance and/or rule.

E. Every owner or agent shall sign and transmit the above referenced return, together with the passenger user fees, to the city manager's office on or before the aforementioned date. If no such passenger user fees are applicable during such calendar quarter, the owner or agent shall nevertheless make a return to so state.

F. Every owner or agent may retain four percent of all passenger user fees collected as an administrative fee for implementing this chapter if payment and return form are remitted by the aforementioned date and owner or agent is in good standing. (Ord. 307-94 §2 (part), 1994; Ord. 77-88 §2, 1977; Ord. 67 §1 (part), 1987)

12.18.050 Rules. The city manager shall have the authority to adopt suitable rules providing for the application and interpretation of this chapter, and rules for providing methods and forms for reporting and collecting of the passenger user fee imposed in this chapter. (Ord. 307-94 §2 (part), 1994; Ord. 67 §1 (part), 1987)

12.18.060 Return forms—Confidential information.

A. All forms filed with the city manager's office for the purposes of complying with the terms of this chapter, and all data obtained from such forms, are declared to be confidential, and such forms and data outlined therefrom shall be kept from inspection of all persons except the city council, city manager and the city attorney; provided nevertheless, upon the advice of the city attorney, the manager may present to necessary individuals any form or data obtained therefrom providing the purpose of such presentation is primarily for bringing administrative and/or legal action against the person or entity whose passenger user fee obligation under this chapter is in question.

B. It is unlawful for any person to divulge to another any information obtained from any form filed with the city or from any data obtained from any such form unless such other person receiving such information is a person permitted to review such forms under the terms of this chapter.

C. It shall be the duty of the city manager to safely keep the forms referred to in this chapter, and all data taken therefrom, secure from public inspection and secure from all private inspection except as in this chapter provided; and the city manager may, after the expiration of three years from the date any such form has been filed, destroy the form.

D. Nothing contained in this chapter shall be construed to prohibit the delivery to any person or his/her duly authorized representative of a copy of any form or report filed by him/her, not prohibit the publication of statistics so classified as to prevent the identification of particular reports or forms and items thereof. (Ord. 307-94 §2 (part), 1994; Ord. 67 §1 (part), 1987)

12.18.070 Recordkeeping duty—Investigation.

A. It shall be the duty of every commercial vessel operator to keep and preserve suitable records of all and such other books or accounts as may be necessary to determine the amount of passenger user fee for the collection of which he/she is liable hereunder. It shall be the duty of every such person or entity to keep and preserve for a period of three years all invoices, all such books, manifests, return forms and other records as may be necessary, all of which shall be open for examination at any reasonable time by the city manager or his/her duly authorized agents.

B. For the purpose of ascertaining the correctness of a manifest or form, or for the purpose of determining the amount of passenger user fee collected, or which should have been collected, by any person or entity, the city council may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda and may request the attendance of any such person, or any officer or employee of any such person. (Ord. 307-94 §2 (part), 1994; Ord. 67 §1 (part), 1987)

12.18.080 Filings to be continuous; seasonal operations.

A person or entity who has filed a passenger user fee return will be presumed to be making successive quarterly returns unless he/she files a return showing termination of business in the city of Whittier. If the operator of a commercial vessel is in good standing with the city, and it operates only on a seasonal basis, it may discontinue filing returns for the period that the operation is shutdown, but only in accordance with such rules as adopted by the city manager. (Ord. 307-94 §2 (part), 1994; Ord. 67 §1 (part), 1987)

12.18.090 Procedures on delinquencies—Penalties and interest.

A. A passenger user fee remittance is delinquent when not received by the city within thirty days from the date of invoice. A penalty equal to five percent of the delinquent passenger user fee shall be added to the passenger user fee for the first thirty days, or any part thereof, and an additional five percent shall be added to the passenger user fee for each additional thirty day period, or fraction thereof, of delinquency, until a total penalty of fifteen percent as accrued. The penalty shall be assessed and collected in the same manner as the passenger fee is assessed and collected.

B. In addition to the penalty provided in subsection A of this section, interest at the statutory rate on a delinquent passenger user fee from the date of delinquency until paid shall accrue and be collected in the same manner as the delinquent passenger user fee is collected.

C. Written Demand and Additional Procedures. If the vessel operator fails to file a passenger manifest or return form, or pay the passenger user fee in accordance with the terms of this chapter, the

city manager twice shall make written demand upon the vessel operator, mailed to his/her last known address, for submission of the manifest, return form and/or passenger user fee remittance. In the event of noncompliance with the demand, the city manager may do any or all of the following things:

1. Civil Action. Make a passenger user fee assessment against the vessel owner or agent, with the assessment based upon an estimate of the level of operations during the period, and institute civil action to recover the amount of the passenger user fee, plus penalties and interest. The estimate of the passenger user fee shall be derived from past payments or returns, the general economic level of business in the community, and presumed passenger manifest or payments from comparable operations;

2. Hearing. Notify the vessel owner or agent in writing by certified mail or personal delivery in writing that a hearing will be held to determine the passenger user fee liability of the individual or entity at a specified time and place not less than fifteen days after the date of the notice. The vessel owner or agent shall present himself/herself at the hearing, and make available for inspection, his books, records, papers and other memoranda pertaining to operations sufficient to enable the city to make a determination whether a passenger fee is due. A failure to respond following written notice to appear shall be deemed an admission as to the city's estimate of the amount of passenger fee owed to the city. (Ord. 307-94 §2 (part), 1994: Ord. 77-88 §3, 1987: Ord. 67 §1 (part), 1987)

12.18.100 Period of limitation. The amount of fee imposed under this chapter may be determined and assessed at any time within a period of three years after the passenger user fee became due and payable. The period shall begin on the date when a payment and/or return form is required to be made. Where no passenger manifest or return form has been filed, the period does not begin to run until the discovery of the delinquency occurs. No suit or other proceeding for the collection of the passenger user fee shall be initiated after the expiration of the period. (Ord. 307-94 §2 (part), 1994: Ord. 67 §1 (part), 1987)

12.18.110 Penalty for chapter violation. A commercial vessel owner or agent who has failed to file a passenger manifest or return form or pay the passenger user fee as required by this chapter shall incur a civil penalty of two hundred dollars for each such failure. In an action to recover the foregoing penalty, if the failure to file a manifest or return form is due to a reasonable cause, and the vessel operator in good faith has filed a manifest or return form as required by this chapter, and transmitted the fees required to be remitted, such shall constitute a defense, which may also be recognized administratively. Each filing deadline for which a prior or pending manifest or return form that is not filed shall be deemed a separate violation under this chapter. (Ord. 307-94 §2 (part), 1994: Ord. 67 §1 (part), 1987)

Chapter 12.20

RESERVED*